

ELLIOTT & ELLIOTT, P.A.
ATTORNEYS AT LAW
1508 Lady Street
COLUMBIA, SOUTH CAROLINA 29201
selliott@elliottlaw.us

SCOTT ELLIOTT

TELEPHONE (803) 771-0555
FACSIMILE (803) 771-8010

January 22, 2018

VIA E-FILING

Jocelyn Boyd, Esquire
Chief Clerk and Administrator
South Carolina Public Service Commission
101 Executive Center Drive
Columbia, SC 29210

RE: Newberry Solar I, LLC Complainant/Petitioner v. Duke Energy Carolinas, LLC
Defendant/Respondent
Docket No. 2017-351-E

Dear Ms. Boyd:

Enclosed for filing please find the Return to Petition to Intervene filed on behalf of Newberry Solar I, LLC and Certificate of Service in connection with the above-referenced matter. By copy of this letter I am serving all parties of record.

If you or counsel has questions, please feel free to contact me.

Sincerely,

Elliott & Elliott, P.A.

Scott Elliott

SE/lbk

Enclosures

cc: All Parties of Record w/enc.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017-351-E

IN RE:)	
)	
Newberry Solar I, LLC,)	
)	
Complainant,)	RETURN TO PETITION
)	TO INTERVENE
Duke Energy Carolinas, LLC,)	
)	
Defendant.)	

Newberry Solar I, LLC (“Newberry Solar”) hereby files with the Public Service Commission of South Carolina (“Commission”) this Return to the Petition to Intervene of Birdseye Renewable Energy, LLC (“Birdseye”) filed with the Commission on or about January 11, 2018, in the above-captioned matter. For the reasons set forth here, Newberry Solar requests that the Commission deny Birdseye’s petition to intervene in this docket.

Newberry Solar filed its complaint against Duke Energy Carolinas, LLC (“Duke”) November 30, 2017 seeking, inter alia, an order of this commission requiring Duke to restore Newberry Solar to its proper place in Duke’s queue relative to other solar projects. Newberry Solar alleged in considerable detail that its interconnection application was entitled to priority over those of all other applicants. As a consequence, this Commission opened the above docket November 30, 2017, and December 8, 2017, the Commission issued the 30 Day Notice, Notice of Hearing and Prefile Testimony letter. On January 5, 2018, counsel for Duke notified the Commission that Newberry Solar and Duke,

the only parties to this docket, had reached a settlement in principle and requested that the Commission hold all procedural deadlines in abeyance. The Standing Hearing Officer issued an order on that date holding all procedural deadlines in the proceeding in abeyance. By correspondence of January 11, 2018 counsel for Newberry Solar wrote the Commission to confirm the parties' settlement. Counsel for Newberry Solar wrote,

Please refer to Commission Directive Order No. 2018-4-H, issued in this Docket. This correspondence confirms the settlement reported in the Directive Order referenced above, dated January 5, 2018. Accordingly, this Docket may be closed with prejudice. Counsel for Duke Energy Carolinas, LLC, consents to this confirmation.

On January 11, 2018 Birdseye Renewable Energy, LLC (Birdseye) filed and served its petition to intervene in the docket.

Pursuant to the authority of the South Carolina Administrative Procedures Act, Birdseye's petition should be denied.

The Commission is governed by the provisions of South Carolina Administrative Procedures Act. S.C. Code Ann. Sections 1-23-310 et seq.; Hamm v. South Carolina Public Service Commission, 309 S.C. 295, 422 S.E.2d 118 (1992). The South Carolina Administrative Procedures Act authorizes the Commission to determine contested cases. A contested case is defined as follows:

"Contested Case" means a proceeding including but not restricted to, ratemaking, price fixing, and licensing, in which legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing. S.C. Code Ann. Section 1-23-310 (3).

When Newberry Solar filed its complaint against Duke with the Commission November 30, 2017, the Commission docketed the complaint as a contested case. When the Commission issued its notices on December 8, 2017, it complied with the Notice requirements of S.C. Code Ann. Section 1-23-320 (A). The South Carolina Administrative

Procedures Act permits the parties to a contested case to dispose of the matter informally by settlement. SC Code Ann. Section 1-23-320 (F) provides that “[u]nless precluded by law, informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default.” See also Public Service Commission Reg. 103-827D. Once the parties settled the dispute between them and so informed the Commission of the settlement, the contested case in the above docket was finally determined. There remained no legal rights, duties or privileges for this Commission to determine. The procedural deadlines had been properly held in abeyance by Order No. 2018-4-H. Nothing was left for the Commission to do but to order that the docket be closed.

That Birdseye filed its petition to intervene prior to the Commission’s closing the docket is not material to the Commission’s inquiry. Birdseye’s petition to intervene does not alter the fact that that the contested case before the Commission had been informally disposed of prior to Birdseye’s acting to intervene. There is simply no contested case pending before this Commission in which to admit Birdseye as a party. Denying Birdseye’s petition to intervene in this docket does not foreclose it from otherwise pursuing whatever legal remedies it may have.

Accordingly, Birdseye’s petition to intervene in the above docket must be denied.

[Signature on Next Page]



Scott Elliott, Esquire
Elliott & Elliott, P.A.
1508 Lady Street
Columbia, SC 29201
Phone: (803) 771-0555
Fax: (803) 771-8010
Email: selliott@elliottlaw.us

*Attorney for Complainant/Petitioner
Newberry Solar I, LLC*

Columbia, South Carolina
January 22, 2018

CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that (s)he has served below listed parties with a copy of the pleading(s) indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: Newberry Solar I, LLC vs Duke Energy Carolinas, LLC

DOCKET NO.: 2017-351-E

PARTIES SERVED: **VIA ELECTONIC AND REGULAR MAIL**

Heather S. Smith, Esquire
Deputy General Counsel
Duke Energy Carolinas, LLC
40 W. Broad Street, Suite 690
Greenville, SC 29601
Heather.Smith@duke-energy.com

Rebecca J. Dulin, Esquire
Duke Energy Carolinas, LLC
1201 Main Street, Suite 1180
Columbia, SC 29201
Rebecca.Dulin@duke-energy.com

Frank R. Ellerbe, III, Esquire
Sowell Gray Robinson Stepp Laffitte, LLC
Post Office Box 11449
Columbia, SC 29211
fellerbe@sowellgray.com

Jenny R. Pittman, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
jpittman@regstaff.sc.gov

Weston Adams, Esquire
Jeremy C. Hodges, Esquire
Nelson, Mullins, Riley & Scarborough, LLP
1320 Main Street, 17th Floor
Post Office Box 11070 (29211)
Columbia, SC 29201
weston.adams@nelsonmullins.com
jeremy.hodges@nelsonmullins.com

PLEADING:

RETURN TO PETITION TO INTERVENE

January 22, 2018



Linda B. Kitchens, Paralegal
ELLIOTT & ELLIOTT, P.A.
1508 Lady Street
Columbia, SC 29201
linda@elliottlaw.us